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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/777,958	12/24/1996	DONALD F. HAMILTON	02103/211002	4029
26162	7590	06/23/2005	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			SWERDLOW, DANIEL	
			ART UNIT	PAPER NUMBER
			2646	

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 08/777,958	Applicant(s) HAMILTON ET AL.	
	Examiner Daniel Swerdlow	Art Unit 2646	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Applicant's arguments are not persuasive (see attached).
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

DETAILED ACTION

1. Examiner acknowledges applicant's letter filed 14 April 2005 requesting responses to the email sent 15 June 2004 be made of record. In order to advance prosecution of the application, this Office action will not be delayed while the request is evaluated.

Response to Arguments

2. Applicant's arguments filed 13 June 2005 have been fully considered but they are not persuasive.

3. **Rejection of Claims 2, 3 and 7 through 10 under 35 USC 112, first paragraph as lacking enablement:**

4. On page 4 of the response applicant repeats arguments in the response filed 23 November 2004. These arguments are unpersuasive for reasons stated in the final Office action mailed on 8 April 2004. In that action examiner provides evidence that one skilled in the art at the time of invention would not have been able to practice the invention in the form of a published statement by an expert in car stereo installation that the Bazooka tube was the most compact bass speaker and applicant's admission that the Bazooka speaker could not be positioned as claimed.

Applicant's allegation that the advantageous acoustic properties achieved are inherent in placing a bass speaker in the position described in the claim ("the trunk as a whole acts a natural low-pass filter" emphasis added) are irrelevant to the ability of one skilled in the art at the time of the invention to produce or obtain a bass speaker that could be so disposed. Absent evidence that such a speaker was available to one of ordinary skill in the art at the time the invention was made

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and that the dimensions and form factor of that speaker were such that it could be positioned as claimed, applicant's arguments are unpersuasive.

5. Rejection of Claims 2, 3 and 7 through 10 under 35 USC 112, second paragraph as indefinite:

6. On pages 6 and 7, applicant characterizes the rejection of Claims 2 and 7 as "not understood". The indefiniteness of Claims 2 and 7 due to lack of antecedent basis stems from the recitation "said one speaker" following the recitations "at least one speaker" and "said at least one speaker". Because the recitation "at least one speaker" comprehends a plurality of speakers, the subsequent recitation of "said one speaker" is indefinite since it does not indicate to which one of the plurality it refers. Since the specification makes no reference to an embodiment with more than one speaker, it cannot resolve the indefiniteness.

7. On pages 7 and 8 of the response applicant refers to the BPIA decision that stated "the examiner has not given any reason why the objected to phrase [i.e., negligible useful volume] is considered to be vague and indefinite". In contrast to the rejection reviewed by the BPIA, the current rejection provides the analysis the BPIA saw as lacking.

8. Rejection of Claims 1 through 4 under 35 USC 102(a), as anticipated by Ziffer (May):

9. On pages 9 and 10 of the response, applicant repeats arguments made in the response filed 23 November 2004. These arguments are unpersuasive for reasons stated in the final Office action mailed on 8 April 2004.

10. Rejection of Claims 1 and 4 through 6 under 35 USC 102(b), as anticipated by Ziffer (March):

11. On page 12 of the response, applicant alleges that the reference fails to teach the frequency characteristic claimed. Examiner respectfully disagrees. As shown in the final Office action, applicant has admitted that the claimed frequency response characteristics are inherent in a vehicle where the low frequency speaker is trunk-mounted and the rear deck is free of holes, the reference discloses these elements and, therefore, meets the claims.

12. Examiner further notes that since Claim 1 makes no explicit claim of frequency characteristic, yet applicant includes the claim in the arguments in this section. This is further indication of applicant's admission of the inherency of the claimed frequency characteristic in a vehicle where the low frequency speaker is trunk-mounted.

13. Rejection of Claims 2 through 4 under 35 USC 103(a), as unpatentable over Ziffer (May) in view of Bazooka:

14. On pages 14 and 15 of the response, applicant repeats arguments made in the response filed 23 November 2004. These arguments are unpersuasive for reasons stated in the final Office action mailed on 8 April 2004.

15. Rejection of Claims 1 through 10 under 35 USC 103(a), as unpatentable over Ziffer (March) in view of Bazooka:

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16. On page 18 of the response, applicant repeats arguments made in the response filed 23 November 2004. These arguments are unpersuasive for reasons stated in the final Office action mailed on 8 April 2004.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Swerdlow whose telephone number is 571-272-7531. The examiner can normally be reached on Monday through Friday between 7:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh H. Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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21 June 2005


SINH TRAN
SUPERVISORY PATENT EXAMINER